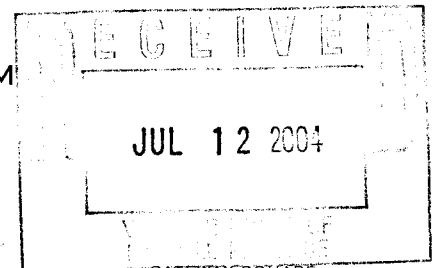


SHEEHEY FURLONG & BEHM
PROFESSIONAL CORPORATION
ATTORNEYS AT LAW

R. JEFFREY BEHM
IAN P. CARLETON
MICHAEL G. FURLONG
CHRISTOPHER R. GANNON
BENJAMIN MARKS*
DIANE M. MCCARTHY
ERIC S. MILLER
PAUL D. SHEEHEY
PETER H. ZAMORE

*ADMITTED IN NY ONLY



GATEWAY SQUARE
30 MAIN STREET
POST OFFICE BOX 66
BURLINGTON, VERMONT 05402

TELEPHONE (802) 864-9891
FACSIMILE (802) 864-6815
www.sheeheyvt.com

VIA HAND DELIVERY
July 12, 2004

Paula DiStabile, Esq., Director
VERMONT DEPARTMENT OF HEALTH
BOARD OF MEDICAL PRACTICE
108 Cherry St.
P.O. Box 70
Burlington, VT 05402-0070

Re: In re: David S. Chase MD, Docket Nos. MPC 15-0203, MPC 110-0803, MPC 208-1003, MPC 163-0803, MPC 148-0803, MPC 126-0803, MPC 106-0803, MPC 209-1003, MPC 140-0803, MPC 89-0703, MPC 122-0803, MPC 90-0703, MPC 87-0703

Dear Ms. DiStabile:

At my request, Phil Cykon held a telephone conference to discuss the impact that pending and anticipated motions will have on the hearing in the above-captioned matter. During that conference, I reluctantly proposed that there be a short postponement in the commencement of the scheduled August 2, 2004 merits hearing in order for the Board and the Superior Court to decide pending and anticipated motions that will determine the necessity for and shape of the hearing. The State opposed that request. Thus, with the consent of Mr. Cykon and the State, I formally raise the same request with the Board through this letter, rather than through a formal and more time-consuming motion.

In my letter of May 17, 2004, I suggested that the parties would be able to complete discovery in this matter by mid-July, file any necessary motions thereafter, and have a hearing promptly after motions are decided. Dr. Chase has taken 17 depositions of the State's witnesses and will complete the remainder of his proposed depositions in the next approximately two weeks. However, during the course of discovery, a number of issues have recently arisen that require the attention of the Board and of the Chittenden Superior Court. Those issues are the subject of current and anticipated motions before those bodies. The outcome of those motions will directly affect the course of the merits hearing in this matter. Unfortunately, it appears that it will take more than three weeks to resolve all of those motions. As a result, we believe that it will benefit the parties and the Board if the commencement of the merits hearing is postponed by 30 to 60 days to allow for resolution of pre-hearing motions and to better ensure an orderly and proper merits hearing in this matter.

First, as you are aware, Dr. Chase has filed a Motion to Dismiss the Superceding Specification of Charges based on information revealed through depositions during the past three weeks. He did not wait until discovery was completed to bring this Motion, but instead filed promptly after the reasons for dismissal were discovered through depositions. The State has indicated that it wishes to respond to and have an evidentiary hearing on that motion. The parties and the Board will need to devote substantial time to this important motion over the coming weeks. If the motion is granted, no merits hearing will be necessary. Moreover, even if the motion is denied, Dr. Chase will require additional time to double-check the accuracy and completeness of all of the State's prior document productions and to carry out any other partial remedies the Board might impose.

Second, many of the complaining patient-witnesses have refused to grant Dr. Chase the same medical records waivers that they have granted the State. As a result, Dr. Chase is unable to review relevant medical records of the patient-witnesses and may be unable to depose many of the doctors who gave them second opinions regarding their cataracts. Dr. Chase has worked over the past three weeks to reach compromise with these witnesses and their attorneys, but has been unable to do so in several cases. As a result, Dr. Chase is required to bring a motion before the Board seeking to exclude the testimony of any complaining patient-witness who does not grant Dr. Chase the same access to medical records as he or she granted the State. Dr. Chase will file that motion on or before July 19, 2004.

Third, counsel for a number of the complaining patient-witnesses in this action have filed a motion in Chittenden Superior Court seeking an order that Dr. Chase and his counsel have no direct contact with ***any of the patients on whom he has performed surgery since 1997***, but that all such communications instead be directed to plaintiffs' counsel as the legal representatives of the as-yet-uncertified potential class of plaintiffs suing Dr. Chase for monetary damages. If granted, that motion would significantly impede Dr. Chase's ability to prepare for the Board hearing by denying him the ability to interview even some of his own potential witnesses without plaintiffs' counsel present. Dr. Chase has opposed this motion as at odds with well-established law, but the Superior Court has not yet ruled. In the meantime, Dr. Chase is understandably reluctant to contact these witnesses regarding the substance of their claims, significantly compromising his ability to prepare for the hearing.

Fourth, many of the complaining patient-witnesses have given deposition testimony that is directly at odds with the allegations contained in the State's Superceding Specification of Charges. In order to minimize the length, expense, and complexity of the merits hearing, those charges that lack evidentiary support should be dismissed prior to the hearing. With the Board's permission, Dr. Chase will bring a dispositive motion at the close of discovery in order to narrow the issues upon which the Board must hear evidence at the hearing, thereby saving all concerned time and resources.

Paula DiStabile, Esq., Director
July 12, 2004
Page 2

Fifth, the hearing officer has proposed that the parties consider utilizing pre-filed written testimony and that they reach agreement on the exhibits to be introduced at the hearing. Given the current discovery and motions schedules, the parties are left with little or no time to take these steps, both of which will ultimately result in a more efficient merits hearing.

As noted at the outset, depositions will conclude within approximately two weeks. By that time, the State will have opposed Dr. Chase's Motion to Dismiss and Dr. Chase will have filed his anticipated motion regarding access to patient medical records. Dr. Chase proposes that the Board set aside time during the first week in August to hear those motions—either during the time presently scheduled for the merits hearing or at the Board's regularly scheduled monthly meeting. Promptly thereafter, if the case is not dismissed, the parties would file any dispositive motions the Board allows based on the completed discovery. The Board would then rule on dispositive motions while the parties draft and submit any prefiled testimony and enter into pre-hearing stipulations regarding exhibits. We do not believe that this entire process, which will result in a much more orderly and efficient hearing (if necessary), will require a postponement of more than 30 to 60 days.

Dr. Chase desires a prompt hearing, but one that is consistent with all of the rules governing this action. The pending and anticipated motions will in large part determine whether that hearing complies with statutory and constitutional requirements. In considering Dr. Chase's request, we ask that the Board take into consideration that all of the issues identified above have arisen during the discovery process over the course of the past month. Prior to this date, Dr. Chase has not sought a single postponement in this complex matter, but has instead worked diligently to prepare for the merits hearing. He has also voluntarily stipulated that he will not practice medicine until this matter is finally resolved, thereby eliminating any prejudice to the State or the public as a result of the requested short postponement.

In light of the nature of this request, we respectfully request a prompt decision by the Board. If you have any questions, please do not hesitate to contact me.

Sincerely,

SHEEHEY FURLONG & BEHM P.C.



Eric S. Miller

ESM/khs

cc: Joseph L. Winn, Esq. (Via facsimile and U.S. Mail)